

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

ANTHONY LEROY IVEY,	:	
	:	
Petitioner,	:	
	:	CASE NO. 4:11-CR-17 CDL MSH
vs.	:	28 U.S.C. § 2255
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

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**REPORT AND RECOMMENDATION**

On July 16, 2012, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (ECF No. 43). At the time of filing his motion pursuant to § 2255, Petitioner also had an appeal pending before the Eleventh Circuit. Consequently, it was recommended that Petitioner's § 2255 motion be dismissed without prejudice as premature (ECF No. 46). Petitioner's appeal was dismissed on September 4, 2012 (ECF No. 50), prior to a ruling on the Report and Recommendation.

On September 6, 2012, Petitioner filed a Motion Under Rule 60(b) seeking relief from a final order regarding his Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. However, as explained above, no order or judgment has been entered regarding Petitioner's motion for relief pursuant to § 2255. Federal Rules of Civil Procedure Rule 60(b) allows the court to "relieve a party. . . from a final judgment, order, or proceeding" for limited reasons. Since no final judgment, order, or proceeding has been entered in this case regarding Petitioner's § 2255 motion, Rule 60 is

inapplicable. It is therefore recommended that Petitioner's motion pursuant to Rule 60 be denied.

WHEREFORE, IT IS RECOMMENDED that Petitioner Ivey's Rule 60(b) motion be DENIED. Pursuant to 28 U.S.C. § 636 (b)(1), Petitioner and/or the Government may serve and file written objections to this Recommendation with the UNITED STATES DISTRICT JUDGE, WITHIN FOURTEEN (14) DAYS after being served with a copy hereof.

SO RECOMMENDED, this 17th day of July, 2013.

S/ Stephen Hyles  
UNITED STATES MAGISTRATE JUDGE